

## § 2.74

at liberty without violating the law; and

(3) In the opinion of the Commission, the prisoner's release is not incompatible with the welfare of society.

(b) It is the policy of the Commission with respect to District of Columbia Code offenders that the minimum term imposed by the sentencing court presumptively satisfies the need for punishment for the crime of which the prisoner has been convicted, and that the responsibility of the Commission is to account for the degree and the seriousness of the risk that the release of the prisoner would entail. This responsibility is carried out by reference to the Salient Factor Score and the Point Assignment Table at § 2.80. However, there may be exceptional cases in which the gravity of the offense is sufficient to warrant an upward departure from § 2.80 and denial of parole.

## § 2.74 Decision of the Commission.

(a) Following each initial or subsequent hearing, the Commission shall render a decision granting or denying parole, and shall provide the prisoner with a notice of action that includes an explanation of the reasons for the decision. The decision shall ordinarily be issued within 21 days of the hearing, excluding weekends and holidays.

(b) Whenever a decision is rendered within the applicable guideline established in this subpart, it will be deemed a sufficient explanation of the Commission's decision for the notice of action to set forth how the guideline was calculated. If the decision is a departure from the guidelines, the notice of action shall include the reasons for such departure.

(c) Relevant issues of fact shall be resolved by the Commission in accordance with § 2.19(c). All final parole decisions (granting, denying, or revoking parole) shall be based on the concurrence of two Commissioner votes, except that three Commissioner votes shall be required if the decision differs from the decision recommended by the examiner panel by more than six months. A final decision releasing a parolee from active supervision shall also be based on the concurrence of two Commissioner votes. All other decisions may be based on a single Com-

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missioner vote, except as expressly provided in these rules.

## § 2.75 Reconsideration proceedings.

(a)(1) *Prisoners subject to guidelines at § 2.80.* (i) In the case of a prisoner subject to the guidelines at § 2.80, the Commission may, following an initial or subsequent hearing:

(A) Set an effective parole date within nine months of the date of the hearing;

(B) Set a presumptive parole date at least ten months but not more than three years from the date of the hearing;

(C) Continue the prisoner to the expiration of sentence if the prisoner's mandatory release date is within three years of the date of the hearing; or

(D) Schedule a reconsideration hearing at three years from the month of the hearing.

(ii) Exception: If the prisoner's current offense behavior resulted in the death of a victim and the prisoner is more than three years below the minimum of the applicable guideline range at the time of the hearing, the Commission may, in its discretion, schedule a reconsideration hearing at a later date that does not exceed the minimum of the applicable guideline range and is not more than five years from the month of the last hearing.

(2) *Prisoners subject to guidelines at the appendix to § 2.80.* (i) In the case of a prisoner subject to the guidelines at the appendix to § 2.80, if the Commission denies parole, it shall establish an appropriate reconsideration date in accordance with the provisions of the appendix to § 2.80. If the prisoner's mandatory release date will occur before the reconsideration date deemed appropriate by the Commission pursuant to the appendix to § 2.80, the Commission may order that the prisoner be released by the expiration of his sentence less good time ("continue to expiration").

(ii) The first reconsideration date shall be calculated from the prisoner's eligibility date, except that in the case of a youth offender or any prisoner who has waived the initial hearing, the first reconsideration date shall be calculated from the date the initial hearing is held. In all cases, any subsequent

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reconsideration date shall be calculated from the date of the last hearing. In the case of a waiver or substantial delay in holding the initial hearing, the Commission may conduct a combined initial hearing and such rehearings nunc pro tunc as would otherwise have been held during the delay.

(iii) Notwithstanding the provisions of paragraph (a)(2)(i) of this section, the Commission shall not set a reconsideration date in excess of five years from the date of the prisoner's last hearing, nor shall the Commission continue a prisoner to the expiration of his or her sentence, if more than five years remains from the date of the last hearing until the prisoner's scheduled mandatory release.

(b) When a rehearing is scheduled, the prisoner shall be given a rehearing during the month specified by the Commission, or on the docket of hearings immediately preceding that month if no docket of hearings is scheduled for the month specified.

(c) At a reconsideration hearing, the Commission may take any action that it could take at an initial hearing. The scheduling of a reconsideration hearing does not imply that parole will be granted at such hearing.

(d) Prior to a parole reconsideration hearing, the Commission shall review the prisoner's record, including an institutional progress report which shall be submitted 60 days prior to the hearing. Based on its review of the record, the Commission may grant an effective date of parole without conducting the scheduled in-person hearing.

(e) Notwithstanding a previously established reconsideration hearing, the Commission may reopen any case for a special reconsideration hearing, as provided in §2.28, upon the receipt of new and significant information concerning the prisoner.

[65 FR 70664, Nov. 27, 2000]

### §2.76 Reduction in minimum sentence.

(a) A prisoner who has served three or more years of the minimum term of his or her sentence may request the Commission to file an application with the sentencing court for a reduction in the minimum term pursuant to D.C. Code 24-201c. The prisoner's request to the Commission shall be in writing and

shall state the reasons that the prisoner believes such request should be granted. The Commission shall require the submission of a special progress report before approving such a request.

(b) Approval of a prisoner's request under this section shall require the concurrence of a majority of the Commissioners holding office.

(c) Pursuant to D.C. Code 24-201c, the Commission may file an application to the sentencing court for a reduction of a prisoner's minimum term if the Commission finds that:

(1) The prisoner has completed three years of the minimum term imposed by the court;

(2) The prisoner has shown, by report of the responsible prison authorities, an outstanding response to the rehabilitative program(s) of the institution;

(3) The prisoner has fully observed the rules of each institution in which the prisoner has been confined;

(4) The prisoner appears to be an acceptable risk for parole based on both the prisoner's pre- and post-incarceration record; and

(5) Service of the minimum term imposed by the court does not appear necessary to achieve appropriate punishment and deterrence.

(d) If the Commission approves a prisoner's request under this section, an application for a reduction in the prisoner's minimum term shall be forwarded to the U.S. Attorney for the District of Columbia for filing with the sentencing court. If the U.S. Attorney objects to the Commission's recommendation, the U.S. Attorney shall provide the government's objections in writing for consideration by the Commission. If, after consideration of the material submitted, the Commission declines to reconsider its previous decision, the U.S. Attorney shall file the application with the sentencing court.

(e) If a prisoner's request under this section is denied by the Commission, there shall be a waiting period of two years before the Commission will again consider the prisoner's request, absent exceptional circumstances.

### §2.77 Medical parole.

(a) Upon receipt of a report from the institution in which the prisoner is